

# **TITLE 15. BOARD OF PRISON TERMS**

## **NOTICE OF PROPOSED REGULATORY ACTION RN 02-02**

### **SUBJECT: *DECISION REVIEW PROCESS***

NOTICE IS HEREBY GIVEN that the Board of Prison Terms (Board) proposes to amend sections 2000, 2041, 2042, 2043 and 2044 of Title 15, Division 2, California Code of Regulations (CCR) after considering all comments, objections, and recommendations regarding the proposed action.

### **AUTHORITY**

These regulations are submitted pursuant to the Board's authority under Penal Code sections 3041, 3052 and 5076.2.

### **REFERENCE**

These regulations are amended to implement, interpret, and/or make specific, Penal Code sections 1170.2, 3041, 3042, 3060, 3063.5, 3063.6, 5075 and 5076.1.

### **PUBLIC HEARING**

A public hearing regarding the proposed regulatory action has not been scheduled. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the Board. ***The written comment period on the proposed regulations will close at 5:00 p.m., on October 31, 2002.*** All comments must be submitted in writing (by mail, fax, or e-mail) to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Board.

Comments may be submitted to:

Lori Manieri, Regulations Coordinator  
Board of Prison Terms  
1515 "K" Street, Sixth Floor  
Sacramento, CA 95814  
Telephone: (916) 445-5277  
Facsimile No.: (916) 322-3475  
E-mail: [regcomment@bpt.ca.gov](mailto:regcomment@bpt.ca.gov)

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Penal Code section 3052 vests with the Board the authority to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside of prison when eligible for parole.

This action will implement Senate Bill 778 (PC § 3041(b)), whereby the Board reviews proposed decisions for inmates serving indeterminate terms. In addition, this action will modify and clarify decision review procedures for other decisions rendered by the Board.

Pursuant to Penal Code section 3041, the Board (during the third year of incarceration) is required to meet with each inmate to document the prisoner's activity and conduct, and one year prior to the inmate's minimum eligible parole release date, to determine, after considering specific criteria, whether the inmate is eligible for parole.

California Code of Regulations (CCR), title 15, sections 2041 and 2042 set out the decision review process whereby within a specified period of time, a proposed decision is either, 1) affirmed, 2) a new hearing ordered, or 3) modified without a new hearing. No decision shall be modified without a new hearing if the modification would be adverse to the prisoner's or parolee's interest. An order for a new hearing vacates the proposed decision. The purpose of the decision review process is to assure complete, accurate, consistent, and uniform decisions and the furtherance of public safety. The Board bases its determination to disapprove or modify a decision on specific criteria outlined in CCR section 2042 and any information or comments received from the public pursuant to CCR section 2028.

The proposed modifications to the regulations will clarify the existing decision review process referring to each type of hearing, and indicating who shall review the proposed decision, the timeframe within which the decision will be reviewed, the determination made, and the effective date of the decision. The modifications provide that any new information received during decision review, that is adverse to a life prisoner, will be forwarded to the prisoner and the attorney to afford them the opportunity to respond. Additional modifications include clarification of the review criteria utilized in disapproval or modification of proposed decisions (CCR § 2042); modification of the effective date of decisions for life prisoners (CCR § 2043); and an increase in the amount of time in which the full board (en banc review) must review a proposed decision referred by a member of the hearing panel or upon the request of the Governor (CCR §2044).

## LOCAL MANDATES

The Board has determined that the proposed action imposes no mandate upon local agencies or school districts.

## FISCAL IMPACT STATEMENT

- Cost to any local agency or school district which must be reimbursed
- in accordance with Government Code sections 17500 through 17630: *None*
- Cost or savings to any state agency: *None*

- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

### **EFFECT ON HOUSING COSTS**

The Board has made an initial determination that the proposed action will have no significant effect on housing costs.

### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS**

The Board has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

### **EFFECT ON SMALL BUSINESSES**

The Board has determined that the proposed amendments will not affect small businesses because they apply only to inmates and parolees of California penal institutions.

### **ASSESSMENT OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION**

The Board has determined that the proposed amendment to regulations will have no affect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

### **CONSIDERATION OF ALTERNATIVES**

The Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

### **CONTACT PERSON**

Please direct requests for copies of the initial statement of reasons, the proposed text of the regulations, or other information upon which the rulemaking is based to:

Lori Manieri, Regulations Coordinator  
Board of Prison Terms  
1515 "K" Street, Sixth Floor  
Sacramento, CA 95814  
(916) 445-5277

In any such inquiries, please identify the action by using the **Board's regulation control number RN 02-02**.

**Note:** In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above: **Pearl McGuire, 324-9895**.

Questions on the substance of the proposed regulatory action may be directed to: **John Winn, Chief Counsel, 322-6279**.

**Website Access:** Materials regarding this proposal can be accessed from the Board's website at: [www.bpt.ca.gov](http://www.bpt.ca.gov).

## **AVAILABILITY OF THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Board has prepared and will make available the initial statement of reasons and the text of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all the information on which the proposal is based, is available to the public upon request from the agency contact person indicated above. Additionally, this notice of proposed action, the initial statement of reasons, and the proposed text of the regulations are available on the Board's Internet Home Page at ([www.bpt.ca.gov](http://www.bpt.ca.gov)).

## **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Following the preparation of the final statement of reasons, copies may be obtained from the Board contact person, and also by fax, or e-mail.

## **AVAILABILITY OF CHANGES TO PROPOSED TEXT**

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.